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SENT ELECTRONICALLY, BY FAX AND MAIL

October 24, 2002

Patrick Wood, III, Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **ISO New England Inc./New York Independent System Operator, Inc.**
Docket No. RT02-3-000

Dear Chairman Wood:

As representatives of consumers throughout New England, it is our responsibility to highlight serious concerns about the proposed merger between the Independent System Operator for New England (ISO-NE) and the New York Independent System Operator (NYISO). It is crucial that the Federal Energy Regulatory Commission (FERC) recognize that the plan, designed to create a Northeast Regional Transmission Organization (NERTO), is not only premature and flawed, but, as proposed, will have a negative impact on ratepayers across the region.

While the resolution of this matter is critical to the future structure of the New England wholesale electricity markets, it is imperative that the FERC consider this proposal in the context of the larger wholesale market design issues. Ratepayers across New England must be assured fair and equitable treatment in the restructuring of the wholesale markets and be afforded the same economic, policy and procedural due process considerations as other regions in the United States. Until the benefits to ratepayers across New England, as compared to New York, are made clear, consideration of this NERTO proposal is premature.

As you know, Congressional amendments to the Federal Power Act in 1992 established the legislative underpinnings of future FERC action to restructure the wholesale electric markets from a cost-of-service based regulatory structure to one that embraced competition. In 1996, the FERC, with Order 888, began the formal process of restructuring the wholesale electric markets under its jurisdiction throughout the United States by ordering electric utilities to provide non-discriminatory open access to the transmission system. Since FERC issued that Order, a majority of the electric industry throughout the United States has been affected by this effort in some manner.

In response to Order 888, many states also began to restructure their retail electric markets with the hope of bringing savings and benefits to ratepayers. Combined, these restructuring efforts represent a significant shift in the economic paradigm that governs one of the key sectors of the United States economy. We have seen many ideas and suggestions to accomplish sometimes varied and disparate goals throughout the period of restructuring; while some of the ideas may ultimately work, some may not. Although it is too soon to judge the success or failure of this entire effort, it is not too soon to evaluate where we are in order to make sure we are heading in the right direction.

Over the past few years, FERC has, in several instances readjusted its policies under Order 888 to conform to the realities of the marketplace, including responses to the California crisis and the financial devastation caused by companies that manipulated the system for their sole benefit. As a result, we now find ourselves in the midst of a continuing national debate about the ultimate character of our electric system. Will we create a system that is truly competitive and responsive to the needs of ratepayers and the concerns of stakeholders, or will we create a system that disenfranchises participants and is accessible only to those who have the power and money to participate? If we choose the former, which we believe is the preferable path, it is incumbent upon all of us to work together through a deliberative process to ensure that this massive effort produces the results we seek and will be worth the necessary expenditure of resources.

In New England, we are in the process of analyzing the impact of three major proposed changes to our wholesale markets: New England Standard Market Design (NE SMD), FERC's Notice of Proposed Rulemaking for a national standard market design (SMD NOPR) and NERTO. Each of these proposals is interrelated and will require considerable cost and effort to implement.

The proposal to form the NERTO appears to be premature in light of the comprehensive SMD NOPR issued on July 31, 2002. It does not seem prudent to move forward with a merger proposal developed prior to the issuance of the SMD NOPR if the NOPR will later require the NERTO to make market adjustments to conform to the federal rules. FERC's recent decision to bifurcate and delay comments on certain aspects of the SMD NOPR until January only heightened our concern about the timing of the NERTO proposal. Given the potential for further delay in the highly contentious SMD NOPR process, New England's consumers will be better served if a decision on the request for a declaratory judgment on RTO status occurs after FERC issues its national standards. FERC can then use its national standards to evaluate specific RTO proposals.

We find this NERTO filing is especially troubling because it conflicts with provisions of the SMD NOPR. Most notably, the NERTO does not incorporate the limited accountability provisions of the SMD NOPR that govern the election of the Board of Directors and the sector structure of the stakeholder advisory process. Additionally, the NERTO proposes a system planning and expansion process that is biased toward transmission upgrades at the expense of demand response, distributed generation, and other alternatives. And, while the SMD NOPR seeks comment on the creation of a Regional State Advisory Committee (RSAC) and suggests that the RSAC could have significant input into a wide range of issues, the NERTO proposal limits its Advisory Committee to seven members, one from each state PUC in the region, with a more limited range of specific responsibilities. Attorneys General, Consumer Counsels, and Public Advocates can play a vital role in assuring consideration of the public interest in transmission siting and NERTO advisory processes and must be represented in any decision-making or governing body. The NERTO also proposes to retain some form of an ICAP requirement while

the SMD NOPR suggests a new “reliability adequacy requirement” to replace the flawed ICAP concept. There are also discrepancies between NERTO and the SMD NOPR in regard to market monitoring functions and the development of significant and robust demand response options.

We also have several specific concerns with the NERTO filing itself.

- The filing itself is incomplete. Although the proposal mentions the possibility of creating a transition mechanism to harmonize the disparate cost impacts on the New York and New England regions, the filing itself does not include a specific proposal for such a mechanism. Without some form of a transition mechanism, consumers in New England are likely to absorb significant cost increases to their electric bills for at least the first six years of the merger. Many stakeholders in the region, including those of us who send you this letter, will not support a merger that does not explicitly provide a mechanism for the equitable sharing of benefits between New York and New England consumers.
- The NERTO filing also refers to ongoing discussions with transmission owning utilities to negotiate an agreement under which the utilities will cede control of their transmission assets to the NERTO. Even though the terms and conditions of such an agreement could have a significant impact on our ultimate evaluation of the proposed merger, discussions are occurring without the involvement of any other regional stakeholders.
- The NERTO filing eliminates the existing governance structures in New York and New England. In their place, the filing proposes a stakeholder process that is “advisory only” and a Board of Directors that is not accountable to any regional entities, including attorneys general or state utility commissions. Under the proposal, the NERTO management will answer only to its Board of Directors and the Board of Directors will answer only to the FERC. An additional concern is the independence of this Board. The current proposal provides for market participants to play a role in the selection of the Board. Oddly, no consumer group has a defined role. This shortsighted proposal ignores the substantial public interest responsibility that any regional entity must have if it plans to operate a regional system for the purchase and delivery of an essential public good such as electrical service. At a minimum, the NERTO must accept responsibility for evaluating the outcomes of the markets it administers and ensure that those outcomes meet some test of fairness.

Ratepayers in New England will suffer needlessly unless FERC exercises its discretion to establish a standard federal wholesale market that will guide the development of any regional organization like the proposed NERTO. ISO-NE has committed itself to implementing NE SMD in March 2003 to bring the New England wholesale markets into better alignment with New York and PJM market designs. What would be gained by approving a merger of the NYISO and ISO-NE under the NERTO filing when there are so many inconsistencies with the proposed national standard market design? Consumers in both regions would benefit more from a year or two of

stability, improvements to each of the existing markets, and a more thoughtful analysis of the need for and the benefits of a larger regional entity based on the outcome of the SMD NOPR.

Thank you for the opportunity to share these concerns with you about the proposed NERTO. We will provide more extensive information and detail in our formal comments.

Very truly yours,

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cc: FERC Commissioners Massey, Breathitt, Brownell
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Connecticut Congressional Delegation
Maine Congressional Delegation
New Hampshire Congressional Delegation
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Commissioners, Massachusetts Department of Telecommunications and Energy
Commissioners, New Hampshire Public Utilities Commission
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Senator Susan C. Fargo
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Representative John J. Binienda
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